IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.308-MA of 2006
Date of Decision: November 29, 2006

Surinder Pal Singh son of Sh.Hardev Singh, resident of Village Sunet,Tehsil and District Ludhiana.

.....Appellant

VERSUS

1.Nachhattar Singh son of Chanan Singh, resident of 5-G, Sarabha Nagar, Ludhiana

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr. SS Behl, Advocate
for the appellant.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No.308-MA of 2006, which has arisen out of the judgment dated 17-02-2006 rendered by the Chief Judicial Magistrate,Ludhiana in a Criminal complaint case No.101 of 15-03-1995 whereby he acquitted accused-Nachhattar Singh under Sections 457 and 427 of the Indian Penal Code by giving him the benefit of doubt.

In brief, the facts of the case are that Criminal complaint No.101 of 15-03-1995 was filed by the present appellant on the broad averment that he along with Maikhu Ram son of Sardar had taken the shop forming part of the property unit No.5-G, Sarabha Nagar, Ludhiana from

respondent No.1 on a monthly rent of Rs.250/- in the year 1992 in which he was running the business of Commission Agents. Respondent No.1 along with respondents No.2 and 3 started threatening the complainant and Maikhu Ram to dispossess them from the shop in dispute forcibly and illegally. It was on 07-03-1995, the matter was reported to the Police Station Sarabha Nagar where the parties were called and a settlement was arrived at between the parties. The compromise was reduced into writing and signed by the complainant, respondents and many others on the pretext that respondent No.1 would not use force to get the shop vacated from the complainant. However, it was on 11-03-1995, the respondents with the help of police broke open the locks of the shop of the complainant and forcibly took away the bags of seeds, agriculture implements, leather goods and leather shoes to the tune of Rs.35,000/- lying in the shop and also broke open the wall of the shop adjoining the property of respondent No.1 and took away cash worth Rs.15,000/- lying in the shop of the complainant. In this way, the complainant has incurred a loss to the tune of Rs.50,000/-. On the basis of the aforesaid averment, complaint under Sections 379, 380, 447, 448, 427, 452, 120-B of the Indian Penal Code was filed against the respondents.

It is pertinent to mention here that respondent No.2-Paramjit Singh was declared proclaimed offender whereas respondent No.3-Jasminder Singh had expired during the pendency of the appeal so proceedings qua him stood abated. Accused No.1 Nachhattar Singh appeared and was admitted to bail.

In the preliminary evidence, the complainant himself stepped into the witness box as PW1 and examined Hardev Singh as PW2;

Jagdish Singh as PW3; Constable Harbhajan Singh as PW4 and closed his preliminary evidence.

Finding a prima facie offence punishable under Sections 380, 457, 427 and 120-B of the Indian Penal Code, the accused were summoned.

In pre-charge evidence, the complainant had examined PW1-Sanjiv Bharti, Cleark, Judicial Record Room, Ludhiana; PW2-Som Parkash, Advocate; PW3-Head Constable Inderjit Singh; PW4-Surinder Pal Singh complainant and PW5-Jagdish Singh.

After going through the evidence, a prima facie case punishable under Sections 457 and 427 of the Indian Penal Code was made out against the accused, to which he pleaded not guilty and claimed trial.

After charge, the complainant Surinder Pal Singh-PW4 appeared for further cross-examination and also produced Jagdish Singh-PW5 for his further cross-examination. Accused-Nachhattar Singh gave the statement that he does not want to cross-examine any other witness and thereafter the evidence of the complainant was closed.

After the evidence of the complainant was closed, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to him, to which he denied and pleaded false implication. He further contended that he is non-resident Indian settled in Canada having big business interest. This complaint has been filed to harass him. In fact, the address of respondent No.1 was given wrong so he was declared proclaimed offender. Another complaint against him has been filed by the complainant's associate Munish Kumar at Dehradoon in which he had brought the process

server to get the service of warrants for which he had initiated appropriate legal proceedings. In fact, the complainant had trespassed and assaulted him as well and the complaint is motivated.

The accused, however, led no evidence in defence.

After evaluating the evidence, the learned Magistrate was of the view that it was a dispute of landlord and tenant for which civil proceedings are pending between the parties. The complainant was unable to show the articles which are alleged to have been taken away by the respondent-accused. Moreover, the complainant could not disclose from where he has purchased the seeds, agriculture implements, leather goods and leather shoes. One of the allegations against the respondent was that he had broken the wall of the adjoining shop and took away a sum of Rs.15,000/- from the shop of the complainant. This plea was also not proved on the record. No photographs of the wall were produced in the Court so as to corroborate the version of the complainant. The complainant has produced a license Ex.Dx which was issued to him by the Agricultural Department for selling seeds on 29-11-1995 after the alleged incident. As such, the allegations of the complainant that accused has stolen the seed bags from the shop of the complainant did not arise. The accused has not interfered in the possession of the father of the complainant rather it is admitted by the complainant that Rent Petition is pending against the complainant and his father.

On appraisal of the evidence, the learned Chief Judicial Magistrate, Ludhiana did not find favour with the prosecution version and acquitted the accused of all the charges framed against him under Sections 457 and 427 of the Indian Penal Code by giving him the benefit of doubt.

Learned counsel for the appellant is unable to convince us that the learned Chief Judicial Magistrate, Ludhiana misconstrued, mis-interpreted the prosecution evidence and has perversely recorded the findings of acquittal.

In this view of the matter, no ground for leave to appeal is made out and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 29, 2006
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